

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KAREN McGRATH and DEPARTMENT OF COMMERCE,
SMALL BUSINESS ADMINISTRATION, Augusta, ME

*Docket No. 99-933; Submitted on the Record;
Issued January 3, 2000*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation effective June 10, 1996.

On June 28, 1994 appellant, then a 29-year-old loan processing assistant, filed a claim for overuse tendinitis in both arms, which she related to typing and writing at work. The Office accepted appellant's claim for bilateral tendinitis of the hands and wrists and began temporary total disability compensation effective September 1, 1994. In a June 10, 1996 decision, the Office terminated appellant's compensation effective June 10, 1996 on the grounds that she was physically capable of performing her date-of-injury job. In a June 27, 1996 letter, appellant requested a review of the written record by an Office hearing representative. In an October 17, 1996 decision, the Office hearing representative found that the medical evidence of record, as of June 10, 1996, had established that appellant's disability due to the employment injury had ceased. She indicated, however, that subsequent medical evidence had created a conflict in the medical evidence on whether appellant had any condition causally related to factors of her employment. The hearing representative therefore affirmed the Office's June 10, 1996 decision but remanded the case for referral of appellant to an appropriate impartial medical specialist for examination and an opinion on whether appellant's bilateral arm condition was causally related to the factors of appellant's employment. In a September 21, 1997 letter, appellant requested reconsideration. In a December 19, 1997 merit decision, the Office denied appellant's request for modification of the prior decisions. In a June 22, 1998 letter, appellant again requested reconsideration. In a December 8, 1998 merit decision, the Office again denied appellant's request for modification of the prior decision.

The Board finds that the Office has met its burden of proof in terminating appellant's compensation.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits. After it has determined that an employee has disability

causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.¹

In a May 2, 1994 report, Dr. Richard Flaherty, a Board-certified plastic surgeon, indicated that appellant complained of an onset of symptoms in her arms in December 1993. He noted that she was on a computer approximately 60 percent of the time and also performed writing, hole punching and filing. Dr. Flaherty related that appellant complained of discomfort in the dorsal radial hand and dorsal forearm bilaterally, worse on the right. He reported that appellant had localized tenderness in the mid portion of the dorsal aspect of the wrist on the right side and had reasonably good strength on each side. Dr. Flaherty stated that appellant had negative Tinel's and Phalen's signs in the carpal tunnel region. He concluded appellant had overuse tendinitis involving primarily the right extensor group in the hand and wrist regions with some radiation to the extensor muscle group but no dramatic localization of discomfort over the radial tunnel area. In subsequent reports, Dr. Flaherty discussed appellant's continued pain and discomfort and indicated that she was unable to perform the duties of her position and was very limited in the duties that she could perform.

Dr. Flaherty referred appellant to Dr. Gregory Nevens, a psychologist, for an examination. In a July 6, 1995 report, Dr. Nevens diagnosed pain disorder based upon psychological factors and general medical condition, major depressive disorder and major anxiety disorder. He commented that appellant's tendency to deny negative emotions, stress and distress served to complicate her pain syndrome and the course of treatment and recovery. Dr. Nevens stated that, with individuals who exhibit strong denial of negative emotional states, these issues could be somaticized and expressed through a somatoform overly to an organic injury. He indicated that these emotional normal sequelae to injury, when somatically expressed, could confound the effort to treat the physical condition, as had happened in appellant's case.

The Office referred appellant for a series of examinations to evaluate her for rehabilitation purposes. In an August 24, 1995 report, Dr. Robert J. Meyer related that appellant had a burning pain on the dorsal hands, wrists and forearms which was fairly constant but aggravated by use of her hands. Dr. Meyer indicated that appellant had normal motion of the neck, shoulders, elbows and wrists. He noted appellant had extreme tenderness over the extensor muscles in both forearms and the dorsal wrist tendons but no tenderness over the upper arms or the epicondyle muscles. He indicated that the Tinel's test was negative bilaterally. Dr. Meyer reported that appellant had diffuse weakness in both arms, particularly with resisted wrist extension on both sides. He commented that the median nerve compression test was positive on both sides. He noted screening for fibromyalgia tender points was negative. Dr. Meyer diagnosed chronic pain syndrome of both arms and significant deconditioning of both arms. He stated that there was a possible relationship between appellant's current condition and her December 1993 injury but added that her apparent disability appeared to be out of proportion to the injury she sustained.

¹ Jason C. Armstrong, 40 ECAB 907 (1989).

Dr. Meyer referred appellant to Dr. Melvyn Attfield, a psychologist, for an examination. In a September 7, 1996 report, Dr. Attfield indicated that psychological testing showed elevation on scales frequently associated with exaggerated pain behavior. He commented that the primary elevation was on the "hysteria" scale which suggested an individual complaining about physical problems but denying any emotional sequelae. Dr. Attfield stated that frequently such individuals would develop an acceptable social facade but then manifest quite florid dysfunctional pain behaviors which would become the attention of other family members. He commented that appellant was currently involved in developing a family and domestic system which, through well-intentioned efforts, would only reinforce her dependency and foster a sense of disability.

The Office referred appellant, together with the statement of accepted facts and the case record, to a panel of physicians for an examination and second opinion. In a February 2, 1996 report, the panel of Dr. Hyman Glick, a Board-certified orthopedic surgeon, Dr. Brian S. Mercer, a Board-certified orthopedic surgeon specializing in neurology, and Dr. J. Peter Strang, a Board-certified psychiatrist, stated that appellant presented an impressively dramatic and extreme clinical example of subjective complaints and symptoms being greater and out of all proportion to the objective findings. They indicated that the work-related diagnosis was mild carpal tunnel syndrome. They commented, however, that carpal tunnel syndrome did not begin to account for the magnitude or the location and nature of appellant's overall symptomatic complaints, which were inconsistent with carpal tunnel syndrome. The panel reported that the symptoms appellant complained of were of a different location and distribution from the pattern seen in carpal tunnel syndrome. They indicated specifically that, while appellant complained of symptoms in the dorsum of the hands, it would be unusual for carpal tunnel syndrome to present such symptoms to the extent cited by appellant. They noted that carpal tunnel syndrome would not explain the dorsal forearm distribution alleged by appellant. The panel stated that a diagnosis of bilateral tendinitis was not confirmed as present or having ever existed. They commented that there were no symptoms, residual or otherwise, related to any diagnosable condition of bilateral tendinitis. They reported that the only objective findings were mildly positive Tinel's and Phalen's tests. The panel stated that appellant had one or more somatoform disorder diagnoses. They indicated that she qualified for the diagnosis of pain disorder with psychological factors in a general medical condition. They noted that other diagnoses, including conversion disorder or factitious disorder, needed to be considered as they could not be ruled in or out based on the complex symptoms presented by appellant. The panel stated that the mild carpal tunnel syndrome did not account for the psychologic symptoms and presentation because this condition was not objectively severe enough to be capable of causing any permanent or severe psychiatric conditions. They commented that the psychiatric difficulties were related to and manifested by the subjective, nonphysiologic, orthopedic complaints. They concluded that any disability was related to the nonwork-related psychiatric condition. They indicated that appellant was not rendered objectively or neurologically by the work-related mild carpal tunnel syndrome. They noted that the history of appellant's condition was inconsistent because carpal tunnel syndrome would improve with time away from repetitive tasks but appellant's symptoms increased why she was not working. The panel indicated that appellant was capable of performing as either a secretary or a receptionist. They commented that the work-related diagnosis was associated with a temporary partial disability. The report of the panel of physicians showed that appellant no longer had bilateral tendinitis and was no longer disabled from work due to any employment-

related condition. They concluded that any psychiatric condition was not related to appellant's employment-related carpal tunnel syndrome but was related to other factors outside of work. The detailed, well-reasoned report of the panel provided a sufficient basis for the Office's decision to terminate appellant's compensation.

The Office hearing representative found that subsequent medical evidence was sufficient to create a conflict in the medical evidence. The Office has not yet proceeded with such further development. A review of the medical evidence supports the conclusion of the Office hearing representative. In a May 30, 1996 report, received by the Office on June 11, 1996, Dr. Flaherty stated that appellant had positive Tinel's and Phalen's tests. He indicated appellant had some median nerve irritation but the major symptoms were not those of carpal tunnel syndrome such as numbness and paresthesias in the median nerve distribution. He noted that appellant's symptoms were in the extensor surface of the hand, wrist and forearm and aggravated by overuse. Dr. Flaherty reported that appellant had significant weakness and was very deconditioned. He indicated that he disagreed with the report of the panel of physicians. In a January 29, 1997 report, Dr. Flaherty stated that appellant's diagnosis remained one of overuse tendinitis involving the extensor tendons on both arms. He indicated appellant continued to have restrictions with regard to heavy lifting, forceful hand use, the use of vibratory machinery or equipment and repetitive hand motions. In an April 27, 1998 report, Dr. Flaherty stated that appellant had symptoms on a clinical basis of overuse tendinitis involving both the flexor and extensor portions of the hand, wrist and distal forearm. He commented that appellant's symptoms worsen when she does work requiring significant hand activity, including office work involving keyboarding. He indicated that appellant's work capacity would preclude the work she had done before as a loan processing officer. The reports of Dr. Flaherty after the Office's June 10, 1996 decision are sufficient to require the Office to refer appellant, together with the statement of accepted facts and the case record, to an impartial medical specialist for an examination, diagnosis and opinion on whether his diagnosed conditions are causally related to appellant's employment and whether appellant has any remaining disability arising from an employment-related condition.

The decision of the Office of Workers' Compensation Programs, dated December 8, 1998, is hereby affirmed. The case is remanded for further action as directed by this decision.

Dated, Washington, D.C.
January 3, 2000

George E. Rivers
Member

David S. Gerson
Member

Bradley T. Knott
Alternate Member